

**From:** Mike May, S.J.  
**To:** Microsoft ATR  
**Date:** 1/26/02 11:43am  
**Subject:** Comments on proposed Microsoft Settlement

Having reviewed the relevant documents, it is my opinion that the proposed settlement in the case of the United States of America v. Microsoft Corporation is not in the public interest. I base my opinion on a number of considerations:

1) The settlement gives the impression that the rich and powerful, even when found guilty, can avoid paying the fair consequences of their guilt, simply because they have the resources to appeal.

I note that the federal court found that Microsoft systematically violated the anti-trust laws of the United States and of several individual states. This violation came even though Microsoft had previously entered into a consent decree on anti-trust issues. The appeals court upheld that finding.

Given that background, the public interest requires that any final disposition of the case include the legal verdict that Microsoft is guilty, and that Microsoft either acknowledge its guilt, or agree that it will not contest its guilt on these matters in any legal forum.

2) The settlement can only achieve its stated goals if either the government intricately involve itself in technical business decisions, or if Microsoft can be trusted to make routinely make subtle interpretations against its strategic interests to promote competition.

The settlement has a myriad of provisions that are open to wide interpretation in implementation. To mention two specifics, deciding if an API is related to security and deciding if a business decision constitutes retribution are both decisions that routinely need to be made for the settlement to be effective.

It is to be noted that the main reason the government gives for entering into the consent decree is that Microsoft will take all possible appeals to decisions it views as contrary to its interests. Past behavior indicates that this is true. It is unreasonable to expect such deeply ingrained behavior to change with the filing of a decree in which Microsoft still contends it has done nothing wrong.

The length of the current legal proceedings show that government oversight of whether Microsoft's business decisions are anti-competitive will be inefficient at best. Furthermore, as a matter of policy, the government should try to avoid remedies where it needs to involve itself in day to day business decisions. Thus it should avoid relying on behavioral remedies unless it has reason to expect questions of compliance or non-compliance will routinely be settled in a non-contentious manner. Given the history of this case, structural remedies are clearly called for.

3) The settlement does not address the issue of substantial advantages Microsoft acquired through a an extensive pattern of illegal activity.

The Federal Court found, and the Appellate Court upheld, that Microsoft has illegally extended and protected its monopoly through anti-competitive practices. In doing this it has harmed consumers and competitors and has gained profit and an even more dominant competitive position. The public interest requires that at least some of the illegally gained advantage be relinquished.

To give a context for my remarks, I am a private citizen, not employed by Microsoft, any of its competitors, or any government. I do not have stock or other financial interests in any party to the case.

Sincerely,

Mike May,  
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CC: Mike May S. J.